

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 71-011-15-1-5-01739-16  
**Petitioners:** Joas & Dana Weirich  
**Respondent:** St. Joseph County Assessor  
**Parcel:** 71-04-15-329-007.000-011  
**Assessment Year:** 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioners initiated their 2015 assessment appeal with the St. Joseph County Assessor on September 22, 2015.
2. On August 3, 2016, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioners.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on January 30, 2017.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on March 29, 2017. She did not inspect the property.
6. Dana Weirich appeared *pro se* and was sworn as a witness. Attorney Frank Agostino appeared for the Respondent. County Assessor Rosemary Mandrici and Deputy Assessor Patricia St. Clair were sworn as witnesses for the Respondent.

**Facts**

7. The property under appeal is a single family residence located at 15548 Countryview Court in Granger.
8. The PTABOA determined the total assessment is \$235,900 (land \$47,800 and improvements \$188,100).
9. The Petitioners requested a total assessment of \$180,000 (land \$20,000 and improvements \$160,000).

## Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: Notice of Assessment of Land and Improvement (Form 11),
- Petitioners Exhibit 2: Petition for Review of Assessment by Local Assessing Official (Form 130),
- Petitioners Exhibit 3: Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
- Petitioners Exhibit 4: Notification of Final Assessment Determination (Form 115),
- Petitioners Exhibit 5: Form 131,
- Petitioners Exhibit 6: Certified appraisal prepared by Steven Hora with an effective date of February 21, 2013,
- Petitioners Exhibit 7: "Market data" for 15576 Summerlyn Drive, Granger,
- Petitioners Exhibit 8: "Market data" for 14480 Thelma Court, Granger,
- Petitioners Exhibit 9: "Market data" for 15545 Spring Court, Granger,
- Petitioners Exhibit 10: "Comparable Sales Report" used by St. Joseph County for the subject property,
- Petitioners Exhibit 11: Blank "Retail Installment Agreement" from American Sunspace Additions with notation from the Petitioners,
- Petitioners Exhibit 12: Page 3 of "Fannie Mae Form 1003" with notation from the Petitioners.
  
- Respondent Exhibit 1: Form 131 with attachments,
- Respondent Exhibit 2: 2014, 2015, 2016 and 2017 subject property record cards,
- Respondent Exhibit 3: Front and aerial photographs of the subject property,
- Respondent Exhibit 4: "Comparable Sales Report" from ProVal dated March 27, 2017,
- Respondent Exhibit 5: Multiple Listing Service (MLS) properties list including maps,
- Respondent Exhibit 6: PTABOA cover sheet with hearing notes,
- Respondent Exhibit 7: Assessment and sales-comparison analysis prepared by Ms. St. Clair with property record cards and photographs,
- Respondent Exhibit 8: Certified appraisal prepared by Steven Hora with an effective date of February 21, 2013,
- Respondent Exhibit 9: 2008-2016 valuation history of the subject property,
- Respondent Exhibit 10: Memorandum listing from subject property record card,
- Respondent Exhibit 11: Sales disclosure for 15545 Spring Court, Granger.

Board Exhibit A: Form 131 with attachments,  
Board Exhibit B: Notice of hearing dated January 30, 2017,  
Board Exhibit C: Notice of Appearance for Frank Agostino,  
Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Objections**

11. The Petitioners objected to Respondent's Exhibit 7 on the grounds of relevancy. Specifically, Ms. Weirich argued that the Respondent utilized sales outside the appropriate time frame for a March 1, 2015, assessment appeal. Additionally, Ms. Weirich argued the Respondent used assessments without considering the possibility that all properties could be assessed too high because the "scale is off." In response, Mr. Agostino argued the objection goes to the weight of the document rather than its admissibility. The ALJ took the objection under advisement.
12. The Petitioners' objection goes to the weight of the exhibit rather than its admissibility. Thus, the Board overrules the Petitioners' objection and Respondent's Exhibit 7 is admitted.

### **Contentions**

13. Summary of the Petitioners' case:
  - a) The property's assessment is too high. In support of their argument, the Petitioners submitted an appraisal prepared by certified residential appraiser Steven Hora. Mr. Hora certified that he completed his appraisal in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). He estimated the property's value at \$229,000 as of February 21, 2013. *Weirich argument; Pet'rs Ex. 6.*
  - b) The Petitioners also submitted "a page" from their Uniform Residential Loan Application when the property was refinanced in August of 2011. According to this document, the indicated value of the subject property was \$220,000. *Weirich testimony; Pet'rs Ex. 12.*
  - c) In addition, the Petitioners presented their own "market research on properties that sold in 2014." According to "Google Maps" they were able to utilize sales less than two miles from their home. Admittedly, they had difficulty finding sales of comparable properties within the mandated timeframe and they did not "investigate" if any of the sales were foreclosures, forced sales, or sales to family members. *Weirich testimony.*
  - d) The first property, located at 15576 Summerlyn Drive, sold on October 16, 2014, for \$168,500. This 2,700 square-foot home was built in 1986 and features three bedrooms and two-and-a-half bathrooms. *Weirich testimony; Pet'rs Ex. 7.*

- e) The second property, located at 14480 Thelma Court, sold on April 10, 2014, for \$178,000. This home measures 2,100 square-feet and includes four bedrooms and two-and-a-half bathrooms. *Weirich testimony; Pet'rs Ex. 8.*
- f) The third property, located “next door” to the subject property at 15545 Spring Court, sold on May 19, 2014, for \$192,000. This 4,603 square-foot home, more than twice the size of the subject property, was built in 1989 and has five bedrooms and three-and-a-half bathrooms. Additionally, this property features a swimming pool. *Weirich testimony; Pet'rs Ex 9.*
- g) In addition, the “sunroom” is incorrectly identified on the property record card for property under appeal. The property record card lists an “enclosed porch” measuring 216 square feet. The “sunroom” should be measured at “11 feet and 8 inches by 14 feet and 5 inches” totaling 168 square feet. *Weirich argument (referencing Resp't Ex. 2); Pet'rs Ex. 11.*
- h) The Respondent’s “ranch-style homes analysis” is flawed. The purportedly comparable sales utilized were all outside of the relevant timeframe. *Weirich argument (referencing Resp't Ex. 7, 8, 9).*

14. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. The property was purchased in 2004 for \$215,000. According to a 2013 appraisal it was valued at \$229,000. However, this appraisal is too far removed from the relevant valuation date. Even so, there is no evidence that the value has decreased since then. *Agostino argument; St. Clair argument (referencing Pet'rs Ex. 6).*

- b) In support of the current assessment, the Respondent offered her own sales analysis based on five two-story properties within the subject property’s “assessment neighborhood.”

15703 Hunting Ridge sold for \$170,000 on May 2, 2014,  
 52259 Clarendon Hills sold for \$273,000 on May 29, 2014,  
 15021 Longbridge Drive sold for \$245,000 on March 7, 2014,  
 51780 Westport Court sold for \$265,100 on August 25, 2014,  
 52035 Glen Arbor Court sold for \$268,400 on May 2, 2014.

Because the “ranch-style” subject property is “surrounded by” two-story homes, it is acceptable to utilize two-story homes in a sales analysis. Adjustments were made to account for differences such as year of construction, size, and exterior finishes. This analysis yielded an indicated a value of \$251,000. *St. Clair testimony; Resp't Ex. 4.*

- c) Another sales analysis was developed utilizing a different set of comparable properties based “more on the distance from the subject property.” These seven two-story properties are located within 0.28 miles of the subject property and were selected on the basis of the number of bedrooms, bathrooms and home size.

Admittedly, these homes are larger than the subject property. The following properties were utilized in this analysis:

- 15623 Billington Court sold for \$230,000,
- 51974 Lake Knoll Court sold for \$275,000,
- 15543 Countryview Court sold for \$289,900,
- 15860 Elmsford sold for \$299,900,
- 15844 Fairbanks Court sold for \$304,000,
- 51621 Fox Pointe Land sold for \$332,000,
- 15545 Spring Court sold for \$363,500.

The Respondent did not develop an indicated value from this analysis. *St. Clair testimony; Resp't Ex. 5.*

- d) Finally, the Respondent prepared both a sales comparison and an assessment comparison analysis utilizing only ranch-style homes. All of the properties utilized are located within two miles of the subject property and “generally the same age.” The sales all occurred in 2016, admittedly outside the appropriate time frame for the March 1, 2015, assessment. In selecting the comparable properties, various elements were considered, including grade, condition, size, and year of construction. In fact, two of the comparable properties were also utilized in the Petitioners’ appraisal. Using the median price per square foot, the indicated value under the sales-comparison approach was \$258,413. And the assessment-comparison approach yielded a value of \$267,173. Even though the analysis supports an increase in the current assessment, the Respondent is not seeking an increase. *St. Clair testimony (referencing Pet’rs Ex. 6); Resp’t Ex. 7, 8, 9.*
- e) In rebuttal, the Respondent introduced the sales disclosure form for the property located at 15545 Spring Court. According to the document, this property sold for \$363,250. The Petitioners erroneously listed the sale price for this property at \$192,000. *Agostino argument (referencing Pet’rs Ex. 9); St. Clair testimony; Resp’t Ex. 11.*

### **Burden of Proof**

- 15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
- 16. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

17. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
18. Here, the parties agree that the assessed value did not increase by more than 5% from 2014 to 2015, and in fact it decreased. The Petitioners did not offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

### Analysis

19. The Petitioners failed to make a prima facie case for reducing the 2015 assessment.
  - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
  - c) The Petitioners submitted an appraisal prepared by Mr. Hora, a certified residential appraiser. He estimated the property's value at \$229,000 as of February 21, 2013. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. However, there is one glaring problem with the Petitioners' appraisal. Mr. Hora estimated the property's value as of February 21, 2013, more than two years before the relevant valuation date. Mr. Hora was not present to provide testimony to relate his valuation date to the relevant valuation date of March 1, 2015. Additionally, the Board is unable to find any explanation in the appraisal to relate the

value to the relevant valuation date, and the Petitioners failed to offer any testimony in that regard. Therefore, Mr. Hora's appraisal lacks probative value.

- d) Similarly, the Petitioners offered "a page" from their Uniform Residential Loan Application that appears to indicate the property's value was \$220,000 as of August 2011. Again, this evidence is nearly four years removed from the relevant valuation date and the Petitioners failed to relate the value to March 1, 2015. Further, the record lacks any evidence explaining how the value was determined or if generally accepted appraisal practices were followed. Accordingly, this document lacks probative value.
- e) The Board also notes the undisputed testimony that the Petitioners purchased the property in 2004 for \$215,000. Obviously, the purchase is too far removed to be probative in a 2015 appeal. Even if the Board were to give credence to the appraisal, the "one page" loan application or the purchase price, none of these supports the Petitioners requested total assessment of \$180,000.
- f) The Petitioners also offered their own market based analysis of three purportedly comparable properties. In doing so, it appears the Petitioners were essentially relying on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
- g) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h) Here, that type of analysis is lacking from the Petitioners' evidence. The Petitioners' evidence failed to provide enough information for the Board to conclude the purportedly comparable properties are comparable to the subject property. Moreover, the Petitioners failed to quantify any differences between the purportedly comparable properties and the subject property. Thus, the Petitioners' sales-comparison analysis lacks probative value.
- i) Finally, the Petitioners argued that there is an objective error in their assessment. Specifically, they argued that their "sunroom" measures only 168 square feet, while the Respondent has it assessed at 216 square feet.

- j) The Respondent did not contest the Petitioners' assertion. Nonetheless, the Board finds that the Petitioners failed to sufficiently explain and prove that an error exists. In fact, they did not even offer a subject property record card indicating the alleged error. The 2015 subject property record card offered by the Respondent indicates a value of \$8,920 for an "EFP," or enclosed frame porch. The Board can only assume this is the "sunroom" referenced by the Petitioners. *See Resp't Ex. 2*. The subject property record card lacks any sketch of the "EFP" and lacks details regarding how the value was computed.
- k) Because the Petitioners failed to show how the enclosed frame porch's value was computed, they failed to prove the PRC should be corrected. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis.")
- l) For these reasons, the Petitioners failed to make a prima facie case for reducing the assessment. Where the Petitioners have not supported the claim with probative evidence, the Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

### **Conclusion**

20. The Board finds for the Respondent.

### **Final Determination**

In accordance with these findings of fact and conclusions of law, the 2015 assessment will not be changed.

ISSUED: June 27, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.